Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332	)	
of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	

To: The Commission

COMMENTS OF THE ASSOCIATION OF AMERICAN RAILROADS

The Association of American Railroads ("AAR"), by its undersigned counsel, hereby responds to the invitation for comments issued by the Commission in the Notice of Proposed Rule Making in the above-captioned proceeding, released October 8, 1993 (hereinafter "Notice").

I. BACKGROUND AND PRELIMINARY STATEMENT

The Commission is required by the Omnibus Budget Reconciliation Act of 1993[1/] (the "Budget Act") to create a comprehensive framework for the regulation of existing and future mobile radio services. Specifically, in enacting the Budget Act, Congress amended Sections 3(n) and 332 of the Communications Act which previously governed private land mobile radio service.[2/] Under new Section 332 of the Communications Act, mobile services are now classified as either "commercial mobile services" or "private mobile services." Commercial mobile service providers are treated as common carriers under the revised Section 332,

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1/ Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, 392 (1993).

2/ 47 U.S.C. §§ 153(n), 332.

as to be effectively available to a substantial portion of the public."

1. Service Provided For-Profit

The first element of the definition of "commercial mobile service" is that the mobile service must be offered "for-profit." The Commission has proposed that mobile radio systems that are operated by governments, non-profit public safety entities and businesses such as the railroads which use the systems solely for their own private operational communications would not be considered to be providing mobile radio services to customers "for-profit." Id. at ¶ 11.

The railroads support the Commission's proposed approach that if a business uses a mobile radio service solely for its private, internal use, such use will not be classified as "for-profit."

2. Interconnected Service Available to the Public

The second element of the statutory definition of "commercial mobile service" requires that "interconnected service," (i.e., service that is "interconnected with the public switched network") be available to the public or a substantial portion of the public. Id. at ¶ 14, 23. Although some railroad mobile radio systems do permit interconnection with the public switched network, this fact alone should not render them "commercial" for purposes of the statute. Instead, the Commission should interpret the interconnection criterion as requiring not only that the mobile radio system be capable of interconnection, but also that the system operator provide interconnection service to paying subscribers.

A component of the definition of commercial mobile services requires that interconnected service be made available "to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public." Id. at ¶ 23. Railroad mobile communication systems do not provide "public interconnection" with the switched network, and thus do not meet the second element of the statutory definition of "commercial mobile systems." The AAR agrees with the Commission's approach that private land mobile radio services that are used by specific industries, businesses, or other user groups such as the railroads (pursuant to Part 90 of the Commission's rules), are not intended for use by the public or even a "substantial portion" of the public." Id. at ¶ 25. As a result, the railroads support the Commission's proposal to exclude such private land mobile radio systems from the definition of commercial mobile services.

III. Commission's Classification of Existing Services is Correct

The railroads support the Commission's tentative conclusion that all existing private non-commercial mobile radio services be classified as private mobile services under Section 332(d)(3) of the Communications Act. Id. at ¶ 35. As indicated previously, the railroads operate private land mobile radio facilities on over 100 channels that are used to ensure safe, reliable and efficient railroad operations. Because these uses of mobile radio fall outside the definitional parameters of "commercial mobile service," they should not be regulated as common carrier

services but should continue to be regulated as private mobile services as the Commission has proposed.

IV. CONCLUSION

The railroads believe that their licensed mobile radio services under Part 90 of the Commission's rules should continue to be regulated as private radio services because they function primarily for safety purposes and for the internal support of railroad operations, they are not operated on a for-profit basis, and they do not provide public interconnection to the switched telephone network.

Respectfully submitted,

THE ASSOCIATION OF AMERICAN RAILROADS

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November 8, 1993

CERTIFICATE OF SERVICE

I, Norma E. Rusnak, hereby certify that on this 8th day of November, 1993, a copy of the foregoing "Reply Comments of Association of American Railroads" was served by first class United States mail, postage prepaid on the following parties:

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